UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Uponor North America, Inc. and its wholly owned subsidiary, Radiant Technology, Inc.,

Plaintiffs,

v.

Mark D. Huggett,

Defendant.

File No. 04-3765 DSD/SRN

COMPLAINT

COME NOW Plaintiffs Uponor North America, Inc. ("Uponor") and its wholly owned subsidiary, Radiant Technology, Inc. ("RTI"), and for their causes of action against the above-named Defendant, state and allege as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 15 U.S.C. § 1125.

2. Diversity of citizenship among the parties exists, and the amount in controversy exceeds the sum of $75,000, exclusive of costs. The Court also has jurisdiction over this action under 28 U.S.C. § 1332.

3. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over the Minnesota state law claims because these claims are so related to Plaintiffs' federal claims as to form part of the same case or controversy under Article III of the United States Constitution.

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4. Venue is proper in this judicial district. Plaintiffs' principal executive offices are situated in this district, and a substantial part of the events or omissions giving rise to the claim occurred in this district. 28 U.S.C. § 1391.

Parties

5. Plaintiffs are engaged in the business of, among other things, manufacturing, selling, and servicing flexible plumbing systems and radiant heating systems, utilizing what is known as "PEX" tubing, for manufactured and modular homes and recreational vehicles.

6. Uponor North America, Inc. is a corporation duly organized under the laws of the State of Delaware, having its principal place of business in Apple Valley, Minnesota.

7. Radiant Technology, Inc. is a corporation duly organized under the laws of the State of Delaware and is a wholly owned subsidiary of Uponor North America, Inc.

8. Marc D. Huggett is an individual who, upon information and belief, resides at 70265 Sunset Boulevard, Union, Michigan 49130.

Facts

9. Defendant was hired on or about February 9, 1996 into Wirsbo Company, a subsidiary of Uponor North America, Inc. (now Uponor Wirsbo, Inc.).

10. Defendant initially held the position of Product Line Manager for the Manufactured Housing Recreational Vehicle ("MHRV") business of Wirsbo Company. Defendant later held the positions of General Manager of the MS Division of Wirsbo Company. Effective January 1, 2002, Defendant held the position of Manager of Business Development of the Housing Systems Division North America ("HSDNA") of Uponor North America, Inc.

11. During the period of his employment, Defendant resided in the State of Michigan and worked in the offices of Plaintiffs located in Elkhart, Indiana.

12. During his employment, Defendant traveled frequently to the State of Minnesota, where he attended business meetings at the North American corporate headquarters of Uponor or Wirsbo and frequently called personally on customers located in the State of Minnesota.

13. Upon information and belief, Defendant continues to travel to Minnesota for business and/or personal reasons.

14. Concurrently with his hiring, Plaintiffs entered into a contract entitled "Wirsbo Company Employment Agreement," a true and correct copy of which is annexed hereto as Exhibit A. This agreement, which expressly applies to Wirsbo Company and all affiliated entities, provides in relevant part as follows:

> Confidential Information. I will never, either during or after my employment by Wirsbo, use or disclose, other than in connection with my employment by the company, Confidential Information to any person not authorized by Wirsbo to receive it, without the prior written consent of Wirsbo. The obligations contained in this paragraph will survive for as long as Wirsbo in its sole judgment considers the information to be Confidential Information. When my employment with Wirsbo ends, I will promptly turn over to Wirsbo all Wirsbo property including, but not limited to, notes, memoranda, notebooks, computer software, drawings or other data and records and any compositions, articles, devices, apparatus, and other items that disclose, describe, or embody Confidential Information, including all copies, mechanically and electronically readable copies, reproductions, and specimens of the Confidential Information in my possession, regardless of who prepared them.
>
> * * * *
>
> Competitive Activities. I agree that during my employment with Wirsbo and for a period of one (1) year after my employment with Wirsbo ends:
>
> (A) I will, prior to accepting employment with any new employer, inform that employer of this Agreement and provide that employer with a copy of this Agreement;

> (B) I will not render services directly or indirectly to any competitive organization in connection with any Competitive Product in any state or in any country in which Wirsbo directly or indirectly, through subsidiaries, independent distributors, or otherwise, markets or services products, or is in the process of planning for the marketing or servicing of products, at the time of my termination of employment.
>
> (C) I will not alone, or in any capacity with another firm, in any way interfere or attempt to interfere with Wirsbo's relationships with any of its current or potential customers;
>
> (D) I will not alone, or in any capacity with another firm, employ or attempt to employ any of Wirsbo's employees on behalf of any other entity competing with Wirsbo.

15. As the Manager of Business Development, Defendant was entrusted with detailed, confidential information concerning the Plaintiffs' customers, products, pricing, and other matters typically conferred upon a senior manager of a business unit.

16. In December 2003, Plaintiffs and Defendant mutually agreed upon Defendant's separation from employment. The parties entered into a "Separation Agreement and General Release," a true and correct copy of which is annexed hereto as Exhibit B.

17. The Separation Agreement and General Release (Exhibit B) provides in relevant part as follows:

> 2.(d)3. That for a period of one (1) year after your employment ends, you will not render services as an employee or otherwise, directly or indirectly to any competitive organization in connection with any Competitive Product in any state or country in which Uponor North America, through any subsidiaries, independent distributors, or otherwise, markets or services products or is in the process of planning for the marketing or servicing of products at the time of your termination of employment. You further agree that you will not, alone or in any capacity with another organization, in any way interfere or attempt to interfere with Uponor North America's relationship with any of its current or potential customers; nor will you alone or in any capacity with

> another organization, employ or attempt to employ any Uponor North America employees on behalf of another entity competing with Uponor North America.
>
> * * * *
>
> (k) In the event that you breach any of your obligations under this Agreement, any outstanding obligations of the Company hereunder shall immediately terminate, and any payments previously made to you under this Agreement shall be returned to the Company.

18. Defendant has engaged in a scheme involving subterfuge and deception to divert to his own benefit, or to the benefit of his current employer, the customers of Plaintiffs.

19. Plaintiffs have learned, and states upon information and belief, that Defendant has disparaged the products and/or services of Plaintiffs and has informed Plaintiffs' customers that Plaintiffs' products or services are inferior to those of Defendant's current employer.

20. Defendant is using the America Online screen name of "PlumbPex @ aol.com." Plumb-Pex® is a registered trademark of Radiant Technology, Inc.

21. The Separation Agreement and General Release provided for a total payment to Defendant in the amount of $79,433.02.

22. Plaintiffs have fully complied with the terms and conditions of the Separation Agreement and General Release and issued to Defendant checks in an amount at least equal to $79,433.02.

23. In fact, Plaintiffs inadvertently issued to Defendant additional checks and has over-paid Defendant in the amount of $24,433.02.

24. Plaintiffs have, on numerous occasions, demanded of Defendant the return of said over-payment, but Defendant has failed or refused to repay the sum of money that he has received and to which he is not entitled.

25. Plaintiffs have learned that Defendant is employed by Zurn Industries, Inc., a company that is in the same line of business as Plaintiffs and which is a direct competitor of Plaintiffs.

26. Plaintiffs have also learned, and states upon information and belief, that Defendant is engaged in activities that are directly competitive with the business of Plaintiffs.

27. Plaintiffs have also learned, and states upon information and belief, that Defendant has called upon personally customers of Plaintiffs with whom Defendant formerly had direct dealings when he was employed by Plaintiffs.

COUNT I
(VIOLATION OF THE LANHAM ACT)

28. Plaintiffs incorporate paragraphs 1 through 27 as though fully set forth herein.

29. Upon information and belief, Defendant has used the name "PlumbPex" in communications with Plaintiffs' customers thereby confusing and deceiving such customers in violation of the Lanham Act, 15 U.S.C. 1125(a).

30. Moreover, Defendant has misrepresented the nature and characteristics of Plaintiffs' services that has caused and is likely continuing to cause confusion, mistake and deception in violation of the Lanham Act, 15 U.S.C. § 1125(b).

31. Defendant has made false and disparaging representations of fact that are likely to cause confusion and to deceive as to the origin, sponsorship and approval of the products and/or services of Defendant of his current employer.

32. Defendant is using the America Online screen name "PlumbPex." Plumb-Pex® is a registered trademark of Radiant Technology, Inc.

33. Defendant does not have permission or the legal right to use the trademark Plumb-Pex® for any purpose.

34. Upon information and belief, Defendant's conduct is willful, intentional and in conscious disregard for the rights of Plaintiffs.

35. As a direct result of Defendant's unlawful conduct, Plaintiffs have been and will continue to be irreparably and substantially harmed and injured. If Defendant's infringement is allowed to continue, Plaintiffs will sustain further loss, damage, and irreparable injury.

36. As a result of Defendant's violations of the Lanham Act, Plaintiffs are entitled to recover damages, the precise amount to be determined at trial. Plaintiffs also are entitled to recover Defendant's profits earned as a result of the false statements, and to preliminary and permanent injunctive relief enjoining Defendant from further and continuing violations of the Lanham Act.

COUNT II
(VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT)

37. Plaintiffs incorporate paragraphs 1 through 36 as though fully set forth herein.

38. Defendant has, among other things, committed the following acts:

(a) Passing off its services as those of another;

(b) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(c) Causing likelihood of confusion or of misunderstanding as to the affiliation, connection, or association with, or approval by, Plaintiffs;

(d) Made false, misleading, and disparaging statements concerning Plaintiffs.

39. Defendant's conduct violates the Minnesota Deceptive Trade Practices Act, Minnesota Statutes section 325D.44 *et seq.*

40. Upon information and belief, Defendant's conduct is willful, intentional and in conscious disregard for the rights of Plaintiffs.

41. As a direct result of Defendant's violations of the Minnesota Deceptive Trade Practices Act, Plaintiffs are entitled to preliminary and permanent injunctive relief enjoining Defendant from further and continuing violations of the Minnesota Deceptive Trade Practices Act.

COUNT III
(COMMON LAW BUSINESS DISPARAGEMENT)

42. Plaintiffs incorporate paragraphs 1 through 41 as though fully set forth herein.

43. Defendant made false, misleading, and disparaging statements concerning Plaintiffs. The statements were communicated to persons other than Plaintiffs.

44. The false, misleading, and disparaging statements concerning Plaintiffs pertain to its business and profession and therefore are actionable *per se.*

45. The false, misleading, and disparaging statements concerning Plaintiffs injured their reputation and lowered its standing in the community.

46. Defendant's false, misleading, and disparaging statements concerning Plaintiffs were made willfully, intentionally, and in conscious disregard for the legal rights of Plaintiffs.

47. As a result of Defendant's false, misleading, and disparaging statements, Plaintiffs have suffered damage and demands judgment against Defendant in an amount in excess of $75,000, the precise amount to be determined at trial.

COUNT IV
(MISAPPROPRIATION OF TRADE SECRETS)

48. Plaintiffs incorporate paragraphs 1 through 47 as though fully set forth herein.

49. Defendant had access to confidential and proprietary information and trade secrets belonging to Plaintiffs. Such information derives independent economic value from not being generally known to, or not being readily ascertainable through proper means by, others.

50. Plaintiffs have taken reasonable steps to safeguard such confidential and proprietary information.

51. Defendant willfully and maliciously misappropriated confidential information of Plaintiffs and used such information, or attempted to do so, to Plaintiffs' detriment.

52. Defendant's actions violate the Uniform Trade Secrets Act as adopted in the State of Minnesota in Minnesota Statutes section 325C.01 *et seq.*

53. As a result of Defendant's misappropriation of trade secrets, Plaintiffs are entitled to injunctive relief pursuant to Minnesota Statutes Section 325C.02 requiring Defendant to return Plaintiffs' trade secret information and prohibiting future possession, use and disclosure by Defendant of such information.

54. Plaintiffs demands judgment against Defendant, jointly and severally, in an amount in excess of $75,000 and to an award of its attorneys' fees, costs and other items as set forth in Minnesota Statutes Sections 325C.03 and 325C.04.

COUNT V
(TORTIOUS INTERFERENCE WITH CUSTOMER CONTRACTS)

55. Plaintiffs incorporate paragraphs 1 through 54 as though fully set forth herein.

56. Plaintiffs had and have a reasonable expectation of continued business relations with its customers and prospective customers.

57. Defendant has purposely, wrongfully and tortiously interfered with Plaintiffs' existing and prospective contractual and advantageous business relationships.

58. As a direct and proximate cause of Defendant's wrongful conduct, Plaintiffs are entitled to judgment because it has suffered harm, which cannot be determined with certainty, but which amount exceeds the sum of $75,000.00.

COUNT VI
(BREACH OF CONTRACT)

59. Plaintiffs incorporate paragraphs 1 through 58 as though fully set forth herein.

60. When Defendant became employed by Plaintiffs, he signed an Employment Agreement prohibiting him from, *inter alia*, competing with or soliciting Plaintiffs' customers for a period of one (1) year after his employment terminated. (See Exhibit A.)

61. Prior to the termination of his employment, Defendant also signed a Separation Agreement in which he agreed to a one-year non-competition agreement. (See Exhibit B.)

62. Defendant knowingly and willfully used Plaintiffs' confidential information in violation of the above-referenced agreements.

63. Defendant knowingly and willfully violated the non-competition provisions of the above-referenced agreements.

64. By reason of these willful and knowing breaches by Defendant, Plaintiffs have been and will continue to be greatly and irreparably harmed by the loss of competitive advantage, income, profits and customers.

65. Defendant has received the sum of $103,866.04, which amount includes an inadvertent overpayment in the amount of $24,433.02.

66. By virtue of his breach of the Separation Agreement, Plaintiffs are entitled to recover the entire severance payment made in accordance with the terms of the Agreement and to recover the overpayment.

67. Plaintiffs demand judgment against Defendant in the sum of $103,866.04 and additional monetary and injunctive relief as the Court may determine to be appropriate.

COUNT VII
(UNJUST ENRICHMENT)

68. Plaintiffs incorporate paragraphs 1 through 67 as though fully set forth herein.

69. Defendant will be unjustly enriched, if he is allowed to keep his wrongfully obtained windfall from Plaintiffs.

70. Plaintiffs seek restitution of all amounts wrongfully obtained by Defendant and the imposition of a constructive trust.

WHEREFORE, Plaintiffs pray for entry of judgment against Defendant as follows:

(a) For a preliminary and permanent injunction, preventing Defendant, and all persons or entities in active concert with him, from using, divulging, and communicating to others any of Plaintiffs' trade secrets and confidential information, the knowledge of which Defendant acquired by reason of or during her employment by Plaintiff;

(b) For a preliminary and permanent injunction, ordering Defendant to return to Plaintiffs all documents and other tangible materials of Plaintiffs in the possession of Defendant obtained from Plaintiff, or from others, and any and all copies; and

(c) For a preliminary and permanent injunction, ordering Defendant to deliver to Plaintiffs all documents or other materials based on or utilizing any aspects of the trade secrets and confidential information of Plaintiffs;

(d) For a preliminary and permanent injunction, preventing Defendant, and all persons or entities in active concert with him, from soliciting or recruiting Plaintiffs' personnel and servicing or soliciting Plaintiffs' customers, so as to preclude further exploitation of the unfair competitive advantages wrongfully obtained by the Defendant.

(e) For restitution in an amount to be determined upon trial;

(f) For judgment in the amount of $103,866.04;

(g) For an additional amount in excess of $75,000, to be determined at trial;

(h) For an award to Plaintiffs of treble the amount of actual damages suffered by Plaintiff, pursuant to 15 U.S.C. § 1117, or that the Court award Plaintiffs punitive and exemplary damages in a sum to be determined upon trial by reason of Defendant's fraud and palming off;

(i) For compensatory damages and injunctive relief under the Minnesota Uniform Trade Secrets Acts in an amount to be determined upon trial;

(j) For equitable relief under the Minnesota Deceptive Trade Practices Acts;

(k) For exemplary damages against Defendant in a sum to be determined upon trial by reason of the willful and deliberate nature of Defendant's actions, involving malicious injury or a reckless indifference to the interests of Plaintiff;

(l) For Plaintiffs' reasonable costs and expenses, including attorney's fees, incurred in connection with the prosecution of this action;

(m) For such other and further relief as the court may deem just and proper.

Dated: 8/11/04

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CLERK
U.S. DISTRICT COURT
MINNEAPOLIS, MINNESOTA

August 11, 2004

VIA MESSENGER

Clerk of U. S. District Court
U. S. Courthouse - Suite 202
300 South Fourth Street
Minneapolis, Minnesota 55414

Re: Uponor North America, Inc. and its wholly owned subsidiary, Radiant Technology, Inc. v. Mark D. Huggett

Dear Sir/Madam:

Enclosed for filing please an *original and one copy* of the following documents:

1. Summons
2. Complaint;
3. Civil Cover Sheet; and
4. Rule 7.1 Disclosure Statement.

Also enclosed is a check in the amount of $150.00 for the filing fee.

I would appreciate it if you would complete the Summons and return it to the messenger together with a filed-stamped copy of the remaining documents.

Thank you for your assistance.

Sincerely,

Bruce J. Douglas, for
Larkin Hoffman Daly & Lindgren Ltd.

Enclosures

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